



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,413	07/03/2003	Matthew Sleeman	11000.1037c5	9443

7590

11/14/2005

Gary M. Myles  
SPECKMAN LAW GROUP  
Suite 100  
1501 Western Avenue  
Seattle, WA 98101

EXAMINER

LI, RUIXIANG

ART UNIT

PAPER NUMBER

1646

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/613,413	SLEEMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ruixiang Li	1646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 72-95 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 72-76,82-86,92 and 94 is/are allowed.
- 6) ☒ Claim(s) 77-81,87-91,93 and 95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Status of Application, Amendments, and/or Claims**

Applicants' amendment filed on 09/09/2005 has been entered. Claims 77 and 87 have been amended. Claims 92-95 have been added. Claims 72-95 are pending and under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

### **Foreign Priority**

A certified copy of the application PCT/NZ03/00105 as required by 35 U.S.C. 119(b) has been received by the office.

### **Oath or Declaration**

A substitute oath or declaration submitted on 09/09/2005 has been received by then office.

### **Withdrawn Objections and/or Rejections**

The rejection of claims 77-81 and 87-91 under 35 U.S.C. 112, second paragraph, has been withdrawn in view of amended claims.

Art Unit: 1646

**Claim Rejection under 35 USC § 102 (b)**

The rejection of claims 77—81 and 87-91 under 35 U.S.C. 102(b) as being anticipated by Ruben et al. (WO 00/24756, May 4, 2000) is maintained. New claims 93 and 95 are also rejected because Ruben et al. teach that FGFR5 may be employed in conjunction with other therapeutic compounds (the 1<sup>st</sup> paragraph of page 122).

Applicants argue that increasing an immune response is only one of many possible uses included in a long list of desired therapeutic applications for FGFR polypeptides included in the Ruben et al. publication. Applicants submit that Ruben et al. provide no data to support any of these proposed uses. Applicants further submit that the reference includes no support for any activity for FGFR polypeptides or fusion proteins.

Applicants' argument has been fully considered, but is not deemed to be persuasive for the following reasons. First, Ruben et al. clearly teach a fibroblast growth factor receptor-5 (or FGFR-5), its structure, and its ligand, FGF-5 (pages 1-2). Ruben et al. also teach the biological activity of FGF-5 (2<sup>nd</sup> paragraph of page 1 and the 4<sup>th</sup> paragraph of page 2). Ruben et al. further teach treating infectious disease with FGFR-5 polypeptides by increasing the immune response, particularly increasing the proliferation and differentiation of B and/or T cells (the 3<sup>rd</sup> paragraph of page 84). Secondly, while numerous diseases are listed in the specification, these diseases appear to be associated with FGF activity (bottom of page 2). Accordingly, the reference

Art Unit: 1646

of Ruben et al. constitutes an affective prior art under 35 USC102 (b) and rejection of claims 77—81, 87-91, 93, and 95 under 35 USC102 (b) is required.

### **Conclusion**

Claims 72-76, 82-86, 92, and 94 are allowed.

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Advisory Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruixiang Li whose telephone number is (571) 272-0875.

The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

Art Unit: 1646

supervisor, Anthony Caputa, can be reached on (571) 272-0829. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please contact the Electronic Business Center (EBC) at the toll-free phone number 866-217-9197.



Ruixiang Li, Ph.D.  
Primary Examiner  
November 9, 2005